

No. 14/13/87-6Lab./457.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Hisar in respect of the dispute between the workman and the management of M/s. Hr. State Agriculture Marketing Board, Panchkula *versus* Dalip Singh.

BEFORE SHRI B. R. VOHRA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, HISAR

Reference No. 323 of 90

Date of receipt : 20-3-1990
Date of decision : 2-3-1995

SHRI DALIP SINGH, C/O SH. VIJAY KUMAR BANSAL, ADVOCATE, DISTT. COURT SIRSA .. *Applicant.*

versus

1. HARYANA STATE AGRICULTURE MARKETING BOARD, PANCHKULA (AMBALA);
2. EXECUTIVE OFFICER, MARKET COMMITTEE, ELLENABAD (HISAR) .. *Respondent-management.*

Present :

Shri V. K. Bansal for the workman.
Shri B. D. Mehta for the management.

AWARD

In exercise of the powers conferred by clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (for short, 'the Act'), the Governor of Haryana referred the following dispute between Dalip Singh and the above mentioned management for adjudication to this Court,—*vide* Labour Depit. letter No. Hsr/70-89/9824—30, dated 7th March, 1990 :—

Whether termination of services of Dalip Singh is justified and in order ? If not, to what relief is he entitled ?

2. According to the workman, he was appointed as Clerk and was posted in Market Committee, Ellenabad,—*vide* order dated 27th July, 1987 and he continued as such upto 26th October, 1987. He was again appointed as clerk,—*vide* order dated 31st October, 1987 and his services were terminated on 2nd February, 1988. It is alleged that he was given third spell of appointment on 8th April, 1988 and he continued as such till 27th May, 1988, on which date, he was relieved from duties and was not allowed to work thereafter. According to the workman, the termination of his services amounted to "illegal retrenchment" and the action of the management was malacious and unfair labour practice, because he was close to attaining a year's continuous service (240 days), within the meaning of Section 25-B of the Act. It was further stated that termination of his services was in violation of Section 25-H of the Act, as the management appointed a number of clerks including one Arjan Singh after 27th May, 1988 and it was claimed that aforesaid Arjan Singh was still in service. He therefore, prayed for reinstatement, with full back wages and other consequential benefits.

3. The management, in its written statement, did not deny that the workman was appointed for 89 days each for three spells but asserted that termination of services of the applicant was as a result of non renewal of contract of service and as such, it did not amount to "retrenchment" as defined in Section 2 (oo) of the Act. Several preliminary objections were also raised by the management, as they are reflected in the following issues framed on 16th October, 1990 by my learned predecessor :—

- (1) As per terms of reference.
- (2) Whether the worker is not covered by the definition of workman ?
- (3) Whether the present case does not amount to retrenchment ?
- (4) Relief.

4. The parties led evidence in support of their rival claims. I have heard Shri V. K. Bansal, A. R. of the workman and Shri B. D. Mehta, A. R. of the management and have gone through the case file. My findings on the above issues are as under :—

Issue Nos. 1 and 3 :

5. Both these issues are inter-connected and as such are being taken up together for purposes of facility.

6. Although Dalip Singh has appeared as his own witness as WW-I and has adduced in evidence his three appointment letters Ex.W-2 to Ex.W-4, each for a period of 89 days and has also adduced in evidence the termination order dated 23rd May, 1988 (Ex W5), but during arguments it was admitted by both the authorised representatives of the parties that the workman had worked for a total period of 225 days in all. Shri B. D. Mehta, A. R. of the management, therefore, stressed that since the workman had not put in 240 days service, he was not entitled to any relief under the Act and it was not necessary for the management to comply with the provisions of Section 25-F of the Act. Shri B. D. Mehta, A. R. of the management, in this connection laid reliance on the authority reported as Karnal Central Co-op. Bank Ltd., Karnal Through its Managing Director versus Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak, 1994 (1) PLR-310.

7. On the other hand, Shri V. K. Bansal, A. R. of the workman argued hotly that since the services of the workman were terminated in anticipation and by circumventing the accrual of right on him on account of one year's continuous service (240 days) when he was close to attain this right, the action of the management amounted to "unfair labour practice" and in support of his argument, he relied upon the observations made by Punjab and Haryana High Court in the authority reported as the Gurdaspur Central Co-operative Bank Ltd. versus The Presiding Officer, Labour Court, Gurdaspur and Others, 1991 (1) SLR-209.

8. I have given careful thought to the rival submissions made at the bar by A. Rs of the parties. So far as the authority of Karnal Central Co-op. Bank Ltd. versus Presiding Officer, Labour Court, Rohtak (*Supra*) relied upon by the A. R. of the management is concerned the facts in this case are distinguishable and the workman had worked for a total period of 185 days only. It was in this context that it was held that there was a distinction between those with service of 240 days and more and others with less service. However, in the authority of Gurdaspur Central Co-op. Bank versus Presiding Officer, Labour Court, Gurdaspur (*Supra*), reliance was placed on the following observations of Division Bench judgment of Punjab and Haryana High Court in CWP No. 3766 of 1983, delivered on 23rd January, 1984:—

"To conclude, we hold that the practice of retrenching a workman, close to his attaining year's continuous service in order to frustrate his attaining rights under Chapter V-A of the Industrial Disputes Act, is an unfair labour practice, unless there are reasons with the employer with regard to the conduct and service of the workman being unsatisfactory. How close should be such period towards attaining a year's continuous service and to come within the purview of "unfair labour practice" is a question dependent on the facts and circumstances of each case. We do not propose to lay down any guidelines on that aspect."

9. It has been held above that each case is to be decided on the facts and circumstances thereof. In our case, admittedly the workman had put in 225 days service and the workman can not be said to be close to attain a year's continuous service and in this case, the action of the management can not be labelled as unfair labour practice. In a similar case reported as Dharam Paul versus State of Haryana, 1992 (1) RSJ-723, where the workman has completed 222 days job, the workman was not given any relief.

10. The workman has also challenged his termination on the ground of Section 25-H of the Act and it was specifically pleaded that one Arjan Singh was appointed on 25th June, 1988 as a clerk. This was so pleaded in para 2 of the claim statement. This part of the pleadings was not specifically denied by the management in the written statement. Although it stands established that the management had appointed Arjan Singh and others, after terminating the services of the workman, but the fact remains that the dispute regarding re-employment of workman in terms of Section 25-H of the Act, had not been referred to this Court and therefore, this question cannot be adjudicated upon by this Court. What has been referred in this instant case is the dispute relating to termination of services of the workman and not the question of his re-employment and re-employment pre-supposes as valid termination, in the first instance and therefore, constitute a different cause of action. It was held by Punjab & Haryana High Court in the authority of Karnal Central Co-op. Bank Ltd. versus Presiding Officer, Labour Court, Rohtak (*Supra*) that Labour Court can go into the question of re-employment only if a reference is made in this regard and not otherwise. The workman is, therefore, not entitled to any relief under Section 25-H of the Act as well.

11. In the light of discussion above, both these issues are answered in favour of the management.

Issue No. 3 :

12. This issue was not pressed by the A. R. of the management and was conceded to by him during argument. This issue is, thus, answered against the management.

Issue No. 4—Relief :

13. In view of my findings the above issues, the termination of services of the petitioner is held as justified and in order and the petitioner is not entitled to any relief in this case. The reference is answered accordingly. Costs made easy.

B. R. VOHRA,

Presiding Officer,
Industrial Tribunal-cum-Labour Court,
Hisar.

The 2nd March, 1995.

Endorsement No. 309, dated the 7th March, 1995.

A copy, with two spare copies, is forwarded to the Financial Commissioner & Secretary to Govt. Haryana, Labour and Employment Department, Chandigarh for necessary action.

B. R. VOHRA,

Presiding Officer,
Industrial Tribunal-cum-Labour,
Court, Hisar.

The 3rd April, 1995

No. 14/13/87-6Lab./510.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Ambala in respect of the dispute between the workman and the management of M/s M. D., Kaithal Co-operative Sugar Mill, Kaithal versus Shamsher Singh.

IN THE COURT OF SHRI S. R. BANSAL (ADDL. DISTT. & SESSIONS JUDGE) PRESIDING OFFICER, LABOUR COURT, AMBALA

Reference No. 186 of 1992

between

WORKMAN SHRI SHAMSHER SINGH, SON OF SHRI MALOOK SINGH, R/O PATTI KAISTH SETH, NEAR RAILWAY GATE, KARNAL ROAD, KAITHAL

and

THE MANAGING DIRECTOR, THE KAITHAL CO-OPERATIVE SUGAR MILL, KAITHAL

Present :

None for the workman.

MR Shri A. K. Sardana.

AWARD

In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (for short called as the 'Act'), the Governor of Haryana referred the following dispute between the workman Shri Shamsher Singh and management Managing Director, The Kaithal Co-operative Sugar Mill, Kaithal to this court for adjudication,—*vide* Haryana Government notification bearing No. 44868—73, dated 21st September, 1992 :—

Whether the termination of services of Shri Shamsher Singh is valid and justified ? If not, to what relief is he entitled ?

The workman raised an industrial dispute by serving a demand notice under section 2-A of the Act. The conciliation proceedings taken up by Labour Officer-cum-Conciliation Officer. The same having failed, the appropriate government made the above mentioned reference to this court for adjudication.

On appearance the workman submitted his statement of claim wherein he took up the position that he was appointed as security guard on 18th March, 1991 and his services were terminated on 31st January, 1992 without any prior notices. It is alleged that the applicant had rendered more than 180 days of continuous service and the post is still lying vacant. He, therefore, demanded his reinstatement with continuity of service and back wages.

On the other hand the management denied having discharged the workman. It was pleaded that the workman was paid off due to cessation of work which was entrusted to him. Later on the workman absented and,—*vide* order, dated 9th August, 1994 *ex parte* proceedings were taken against him.

In its *ex parte* evidence the management examined WM-I Ram Parshad, Establishment Clerk who stated that the workman served the management on daily wages for about 6 months in the year 1991-92 and thereafter he was paid off due to the cessation of work entrusted to him. The evidence of the management has gone unrebutted. The workman has not led any evidence on the file. His mere allegations of the claim statement can not be accepted. On the other hand the management has been able to prove that the workman rendered about 6 months of service now was paid off on account of cessation of work entrusted to him. In view of the unchallenged evidence of the management on the record it is held that the services of the workman were never terminated nor is he entitled to any relief. This reference shall stand answered accordingly.

S. R. BANSAL,

The 14th March, 1995.

Addl. Distt. & Sessions Judge,
Presiding Officer, Labour Court, Ambala
Endorsement No. 294, dated the 14th March, 1995.

Forwarded (four copies), to the Financial Commissioner and Secretary to Government of Haryana, Labour and Employment Department, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

S. R. BANSAL,

Addl. Distt. & Sessions Judge,
Presiding Officer, Labour Court, Ambala.

The 6th April, 1995

No. 14/13/87-6Lab/525.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court-I, Faridabad in respect of the dispute between the workman and the management of M/s Industrial Pattern, 16/2, Mathura Road, Faridabad *versus* Gajraj.

IN THE COURT OF SHRI N. L. PRUTHI, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I, FARIDABAD.

Reference No. 218/94

IN THE MATTER OF INDUSTRIAL DISPUTE

between

**SHRI GAJRAJ S/O SHRI BADLE SINGH, VILLAGE & POST OFFICE, TIGAON,
DISTRICT FARIDABAD**

and

M/S INDUSTRIAL PATTERN, 16/2, MATHURA ROAD, FARIDABAD.

Present :

Shri M. L. Sharma for the Workman.

Shri Jagbir Bhadana for the Management.

AWARD

Under the provisions of section 10 (1) (c) of Industrial Disputes Act, 1947, the Government of Haryana have,—*vide* Endorsement No. ID/FD/91—94/30959—64, dated the 3rd August, 1994, referred the following dispute between the parties above named for adjudication:—

“Whether termination of services of Shri Gajraj is legal and justified? If not, to what relief, he is entitled?”

2. The matter has been settled between the parties. The workman has been paid an amount of Rs. 4,000 in cash in full and final settlement of his claim. Statement of workman has been recorded. No more dispute now survives in this case. An award is passed accordingly.

N. L. PRUTHI,

The 6th March, 1995.

Presiding Officer,

Industrial Tribunal-cum-Labour Court-I,
Faridabad.

*Endorsement No. 531, dated the 15th March, 1995.

A copy with three spare copies is forwarded, to the Financial Commissioner and Secretary to Government, of Haryana, Labour Department, Chandigarh.

N. L. PRUTHI,

Presiding Officer,

Industrial Tribunal-cum-Labour Court-I,
Faridabad.

No. 14/13/87-6Lab./527.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court-I, Faridabad in respect of the dispute between the workman and the management of M/s Endee Woollen & Silk Mills Pvt. Ltd., Faridabad versus Chuni Lal.

BEFORE SHRI N. L. PRUTHI, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I, FARIDABAD

Reference No. 145/87

In the matter of Industrial Dispute.

between

SHRI CHUNI LAL, S/O SHRI TIRANGI SHAH, C/O ANTRASTRIYA WADI MAZDOOR UNION, G-162, INDRA NAGAR, SECTOR-7, FARIDABAD

and

M/S ENDEE WOOLLEN & SILK MILLS PVT. LTD., MATHURA ROAD, FARIDABAD

Present :

Workman in person.

Shri P. N. Diwedi for the management.

AWARD

Under the provisions of section 10(1) (c) of Industrial Disputes Act, 1947, the Government of Haryana have,—vide Endst. No. ID/FD/26748—53, dated 9th July, 1987 referred the following dispute between the parties above-named for adjudication :—

Whether the termination of services of Shri Chuni Lal is legal and justified ? If not, to what relief, he is entitled ?

2. The matter has been settled at Rs. 8250. The workman has been paid an amount of Rs. 8000, by cheque No. 533325 dated 28th February, 1995 drawn on State Bank of India, Sarai Khawaja, and Rs. 250 in cash in full and final settlement of his claim. Statement of workman recorded. No more dispute now survives in this case. An award is passed accordingly.

N. L. PRUTHI,

The 1st March, 1995.

Presiding Officer,

Industrial Tribunal-cum-Labour Court-I,
Faridabad.

Endst. No. 514, dated the 9th March, 1995.

A copy, with three spare copies, is forwarded to the Financial Commissioner and Secretary to Government, Haryana, Labour Department, Chandigarh.

N. L. PRUTHI,

Presiding Officer,

Industrial Tribunal-cum-Labour Court-I,
Faridabad.